

*Filed
8 July 97*

NORWEST CORPORATION

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July 7, 1997

Director, Card Technology Division
Financial Management Service
U.S. Department of the Treasury
Room 526
Liberty Center
401 14th Street, S.W.
Washington, D.C. 20227

Dear Mr. Galligan:

Norwest Corporation is an \$80.2 billion bank holding company which owns financial institutions in 16 states. This letter responds to the Department of the Treasury's (the "Treasury's") request for comment regarding a new regulation, implementing the Direct Federal electronic benefits program pursuant to authority granted by 12 USC §3332(i). Norwest welcomes the opportunity to comment on this new regulation.

Section 3332(i) authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the mandatory direct deposit program described in 12 USC §3332. To make the proposed regulation a more workable solution to the problem of providing electronic benefits to the unbanked, Norwest believes that there are a number of modifications that need to be made. Norwest also believes that there are a number of unanswered questions that must be answered in the final regulation. For these reasons, Norwest opposes the adoption of the proposed regulation in its current form and respectfully requests that the Treasury consider revisions in accordance with the comments set forth below.

Liability

The proposed regulation could be interpreted as requiring financial institutions to act as financial agents. Under this interpretation, financial institutions may be forced to assume a potentially significant liability in connection with customers they have not voluntarily agreed to do business with. Of particular concern will be liability arising from unauthorized transactions. There are two reasons why Norwest believes financial institutions will be particularly vulnerable to losses arising from unauthorized transactions. First, institutions will know little or nothing about the intended recipients of the funds. This lack of familiarity with the recipients will make financial institutions easy targets for fraudulent transactions. Second, because an account may only be closed with the approval of the Financial Management Service

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(the "Service"), institutions may be required to keep an account open long after a particular recipient has demonstrated an inability to properly manage an account of this type. Furthermore, because the Service will be setting the fees that may be charged, many, if not all, institutions may be inadequately compensated to cover costs. If service fees are not sufficient to cover costs, affected institutions will need to either absorb the shortfall or increase fees charged to other customers. In either case, forcing institutions to provide services as financial agents under the proposed regulation may result in shifting the cost of delivering government benefits to those financial institutions selected by the Service or their customers. Norwest believes that such subsidies are inappropriate and inequitable. Many of the comments set forth below are therefore directed at ensuring that a financial institution's role as financial agent remains voluntary.

Financial Agents

Norwest recommends that the definition of "financial agent" contained in proposed section 207.2 be revised to read as follows: "Financial agent means an eligible financial institution that has (i) been designated by the Service as a Depository and Financial Agent of the United States for EBT pursuant to this part, and (ii) expressly agreed to act in such capacity pursuant to a written agreement." These revisions have two purposes. First, to clarify that it is the Service that designates financial agents. Second, and more importantly, the revisions clarify that an eligible financial institution need not accept the designation of financial agent.

Establishment of Accounts

Subsection 207.3(a)(1) of the proposed regulation provides, among other things, that a financial agent must "[e]stablish an account in the name of each unbanked recipient". Norwest has two concerns regarding this portion of subsection 207.3(a)(1). First, taken literally, the subsection would seem to require every financial agent to establish an account in the name of each of the estimated 10 million unbanked recipients of Direct Federal EBTs. Clearly, this is not the intended result. Second, it fails to give the financial agent any discretion regarding whether to establish an account for specific recipients. This latter concern is of greater significance because it means a financial institution that agrees to act as a financial agent must establish accounts for anyone specified by the Service, without regard to either the recipient's relevant history or the financial institution's own experiences with that individual. Such a requirement, coupled with the fact that only the Service may direct the closing of an account (discussed below), is likely to have a significant chilling effect on the willingness of financial institutions to act as financial agents. This, in turn, is likely to impede Treasury's goal of developing a payment system for the unbanked. To address these concerns, Norwest recommends that the opening of subsection 207.3(a)(1) be revised to read as follows: "Establish an account in the name of each unbanked recipient acceptable to the financial agent for whom the Service has requested an account to be opened."

Closing Accounts

Subsection 207.3(a)(1) provides that an account established for an unbanked recipient "may be closed only at the direction of the Service". Norwest is concerned that prohibiting financial institutions from having any control over the persons with whom they will do business will impose an undue burden on those institutions and their employees.

There are two basic reasons why a financial institution elects to terminate a customer relationship: perceived financial risk and customer misconduct. Although the nature of the deposits associated with Direct Federal EBT eliminates substantially all risks arising from the deposit-taking activity, risks associated with the disbursement of funds will remain. Restricting a financial institution from terminating relationships that it perceives as creating excessive financial risks creates an undue burden on financial institutions. Customer misconduct is the other reason that financial institutions elect to terminate customer relationships. Misconduct may take the form of disruptive behavior, harassment of bank employees, or threatening behavior directed at the bank or its employees. In any event, restricting a financial institution from terminating account relationships when such behavior is observed could impair the bank's ability to effectively provide services to its customers or place the personal safety of bank employees in jeopardy.

To address these concerns, Norwest recommends that the last sentence of subsection 207.3(a)(1) be revised as follows: "Such account must be eligible for Federal deposit insurance and may be closed only (i) at the direction of the Service; or (ii) by the financial agent upon a determination by the financial agent that misconduct by the recipient warrants closing the account or that continuing to maintain the account creates an undue financial risk."

Regulation E

Although subsection 207.3(a)(2) and the accompanying commentary clearly mandates that recipients participating in the Direct Federal EBT program are to receive full Regulation E protection, it remains unclear whether accounts established under the regulation will be viewed as an "account" as that term is defined by section 205.15(a)(2). It is also unclear whether the financial agent will be excepted from compliance with Regulation E to the same extent that the Service would be excepted by section 205.15 if it were to establish the account directly.

Norwest believes that it is essential that there be no confusion regarding the status of these accounts and that it be made clear that these accounts be governed by Regulation E only to the extent that the accounts would be governed by Regulation E if they were established directly by the government agency for which the financial institution is acting as agent. Such a clarification would be consistent with the statutory mandate that recipients be "given the same consumer protections with respect to the account as other account holders at the same financial institution". See 31 USC §3332(i)(2)(B). This mandate merely requires assurance that individuals be given the same consumer protections as those that are afforded in connection with *comparable* accounts at the same institution. In this instance, comparable accounts are accounts established directly by government agencies.

In the absence of the clear inclusion of these accounts within the scope of section 205.15, there is the risk that the scope of the financial institution's responsibility with respect to the recipient may be misunderstood. For example, unless the account is brought within section 205.15, there is a real doubt whether the access device that is required to be issued under proposed section 207.3(a)(4) is an "accepted access device" for purposes of Regulation E. For this reason, Norwest requests that Treasury modify the regulation to expressly provide that accounts established pursuant to Part 207 are considered "accounts" as that term is defined by section 205.15 of Regulation E.

Accountability of the Financial Agent

Subsection 207.3(b) provides that a financial agent is accountable only to Treasury. Norwest believes that it would be helpful for Treasury to more fully explain what it means for the financial agent to be accountable only to Treasury. For example, does a recipient have any claim against the financial agent under Regulation E or are a recipient's claims against the government? If the recipient has any questions regarding the account or if the recipient believes that an error has occurred on the account, is the recipient to contact the financial agent or the Service?

Applicability of 31 CFR Part 210

The commentary to the proposed regulation indicates 31 CFR Part 210 is intended to deal with the Direct Deposit program. The commentary also indicates that distinctions between Direct Deposit and EBT make it desirable to adopt a regulation that deals specifically with EBT. Based on these statements, it is unclear whether any portion of 31 CFR Part 210 is intended to apply to payments made under 31 CFR Part 207. Certainly, the commentary could be read to mean that Parts 207 and 210 do not overlap. If this is the result, there remain several matters addressed by Part 210 that need to be addressed in some manner, including the liability of the United States for the failure to properly credit an account, the liability of financial agents in the event of the death or legal incapacity of a recipient, and the reclamation procedures applicable to EBT.

Access to the Account

Deposits. Subsection 207.3(a)(3) provides that the financial agent is to credit a recipient's account with Direct Federal payments. That subsection also permits a financial agent to credit the account with payments made under a State EBT program. The commentary provides that no other deposits may be made to the account. If this is a requirement of the regulation, it should be made more explicit by modifying subsection 207.3(a)(3) to expressly state that no other deposits may be made to the account.

Withdrawals. Other than providing that the account is to be accessible by means of a debit card, the proposed regulation is silent regarding the means by which recipients are to gain access to funds deposited to their accounts. Due to the fact that ATMs are currently designed to disburse funds in pre-specified incremental amounts (e.g., \$5, \$10, or \$20), in order for a recipient to gain access to his or her full benefit payment, there will likely be a need for the recipient to have access to in-bank services. Such services are the most expensive means of providing withdrawal services to bank customers. Consequently, Norwest believes that financial institutions should be able to impose reasonable fees for using a teller and reasonable restrictions on the number of in-bank transactions that will be provided.

Cost Recovery

The proposed regulation provides that the financial agent is to provide its services on such terms as the Service specifies. Presumably these terms will include the fees that a financial institution may charge for each of its services. The statute creating the program provides that the Secretary of the Treasury is authorized to create regulations that ensure recipients have access to an account at a "reasonable cost". Regional and institutional variations will make it virtually impossible for Treasury to establish pricing structures that are appropriate for all financial institutions. Norwest believes that financial institutions should generally be permitted

to set their own fees for services without government intervention. Norwest recommends that the regulations be modified to permit financial agents to charge reasonable fees in connection with the account and to further provide that a fee shall be conclusively deemed to be "reasonable" if the fee is the same as fees charged for comparable services provided to other account holders. It should also be made clear that the financial agent is not responsible for fees charged against the account by third parties (e.g., ATM surcharges).

Miscellaneous Comments and Questions

1. It is unclear to what extent other regulations, such as Regulations CC and DD, might govern the accounts established pursuant to this regulation.
2. It is unclear what the financial agent's obligation is with respect to maintaining information regarding the recipient. For example, does the financial agent have an obligation to collect and retain information regarding the recipient's tax identification number pursuant to 31 CFR section 103.34(a)? Is the recipient considered an account holder of the financial institution for purposes of the recordkeeping requirements set forth in 31 CFR Part 103?
3. What, if any, impact does the recipient's decision to open an account directly with the financial institution acting as the financial agent have on the recipient's qualification to receive Direct Federal EBT payments? Does the financial agent that becomes aware that the recipient is no longer "unbanked" have any obligation to report this information to the Service?
4. Norwest believes that the effective date of the final regulation should be postponed until January 1, 1999.

In closing, we wish to restate that Norwest welcomes this opportunity to comment on the proposed new regulation. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth J. Bonneville". The signature is fluid and cursive, with the first name "Kenneth" being more prominent.

Kenneth J. Bonneville
Senior Counsel